

REMARKS/ARGUMENTS

The Examiner is thanked for the review of the application.

Claims 4-13 remain in this application. No Claims have been amended. No new claims have been added. No new matter has been added. Two Declarations under 37 CFR 1.132 are being submitted with the Response.

In the Final Office Action dated March 17, 2008, the Examiner has objected to the specification “as failing to provide proper antecedent basis for the claimed subject matter... Correction of the following is required: the specification contains no antecedent basis for the limitation ‘wherein the length of the case section is dependent upon water weight volume of the cartridge case, the bore diameter of the gun barrel, and the weight of the bullet.’ In particular, it is noted that this limitation relates to the length of the case section, whereas the limitation in claims 5 and 10 relate to an overall range of values that those variables contain. In the remarks/arguments filed 1/22/2007, Applicant responded by citing several portions of the specification which relate to the material of claims 5 and 10, not 4 and 9. The cited portion, in fact, appears to contradict the claim – ‘Based on the desired bullet weight and cartridge length, the bore diameter is then determined (page 7 of 10). There is no indication in the formula used for how any of this relates to cartridge length.”

Applicants respectfully direct the Examiner’s attention to pages 12-13 of the specification which includes a detailed table illustrating sixteen alternative embodiments of 50 caliber cartridges having a 30 degree shoulder, and showing, by example, the respective Efficiency Ratings of the various case lengths; Case (Length) being dependent on Case Capacity (measured by Water Weight) which is a function of at least the Bore (Diameter) and Bullet Weight. Applicants also wish to note that Claim 4 as originally filed in the present application substantially recites the objected claimed limitation.

Also in the Office Action, the Examiner rejected Claims 4-13 under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The examiner has stated that “The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. In particular, the last limitation of claim 4 states, ‘the length of the case section is dependent upon water weight volume of the casing, the bore diameter of the gun barrel, and the weight of the bullet.’ There is no indication, in the specification or claims, as to how it depends on these variables, and further, what value might be specified by these variables. As such it is indefinite.”

Applicants respectfully submit that with respect to the recitation of “length of the case section ...”, Claim 4 is compliant with 35 U.S.C. 112 for the reasons discussed above. Hence, Dependent Claims 5-8 are also in compliance with 35 U.S.C. 112. Base Claim 9 is also in compliance as for the same reasons as Claim 4; hence, Dependent Claims 10-13 are also in compliance with 35 U.S.C. 112

The Examiner has also stated “...no actual cartridge cases is positively claimed. Thus any limitations on the water weight volume, bore diameter of the mouth, or the weight of the bullet are irrelevant except to define what the gun chamber is capable of use with (as it applies to claims 4, 5, 9, and 10)...Although this rejection was previously withdrawn, it was withdrawn in error because of the other 112 rejection that was resolved.”

Applicants wish to point out that because of the precise chamber/cartridge fit needed for safe and accurate discharge of firearms, chamber dimensions and cartridges dimensions are essentially synonymous. Hence virtually all limitations related to case cartridge dimension(s) will at least indirectly impact the respective chamber dimension(s). Accordingly, Claim 4 appropriately recites multiple case cartridge limitations, for example, “... accepting a 50 caliber gun cartridge ... housing a cartridge case ... of the cartridge case ... configured for accepting a cartridge ... water weight volume of the cartridge case”.

Claims 4-13 were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 6,532,876 and claims 1-2 of U.S. Patent No. 6,679,150. The Examiner states "Although the conflicting claims are not identical, they are not patentable distinct from each other because they relate to corresponding components (or methods therefore) defined in exactly the same manner. The gun cartridge and gun chamber must be built to fit one another, and both sets of claims define the same sets of measurements – the older patent thus fully implies the claims of the present invention. Additionally, claim 4 of the present invention is broader than claim 1 of the '876 patent in that it does not specify case length of shoulder angle.

With respect to the nonstatutory obviousness-type double patenting rejection, two terminal disclaimers are filed herewith. Applicants respectfully request withdrawal of the rejection.

Also in this Office Action, the Examiner rejected Claims 4-13 under 35 U.S.C. 103(a) as being unpatentable over Jamison (USP 5,970,879).

The Examiner states that "Jamison discloses a gun chamber (figure 2 element 16) for use with a gun action and barrel and configured for accepting a gun cartridge having a proximal and distal end for propelling a bullet of a pre-determined weight, the gun chamber having a case section (near the element number 16) proximal to the gun action and configured for housing a cartridge case, a free bore section (41) proximal to the barrel and distal end of the cartridge case, a shoulder section (angled section to the left of element 40 in figure 2A) at the proximal end angling inward from the case section, a neck portion (terminating in element 40) located between the shoulder section and the free bore section wherein the neck portion is configured for accepting a cartridge having a mouth for accepting a bullet, **wherein the length of the case section is inherently dependent upon water weight volume of the cartridge case, the bore diameter of the gun barrel, and the weight of the bullet.**" (Emphasis added).

The Examiner further states that "Jamison further discloses that the shoulder section angles inward at an angle of 30 degrees (col. 6, line 18), and a sum of the case section, shoulder section, neck section, and free bore section having a maximum total length of 4.0 inches (col. 4, lines 12-13,

where the value as described in the claim is equal to L plus the section 41. L can be calculated to be max at 2.35, and the section 41 is very small relative to that amount, so it does not exceed 4.0 inches total). Further, the case section has a length (L) of between 1.9 and 2.5 inches, as shown above.

Jamison does not disclose a 50-caliber cartridge with the measurements and ranges as claimed.” (Emphasis added).

Finally, the Examiner states that “Jamison discloses the claimed invention except for that the cartridge is a 50-caliber gun cartridge with a diameter of approximately 0.668 inches at the distal end and a mouth with a bore diameter of approximately .510 inches.” The Examiner believes “[I]t would have been obvious to one of ordinary skill in the art at the time the invention was made to provide those values for a 50-caliber cartridge, **since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.”** (Emphasis added).

Regarding this rejection, the Examiner also maintains that “Jamison discloses the claimed invention except for the water weight volume of the casing in grains multiplied by the bore diameter of the mouth in thousandths of an inch divided by the weight of the bullet in grains is greater than or equal to 110 and less than or equal to 145. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the bullet properties in that range, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.”

Applicants respectfully traverse this 103(a) rejection and resubmit arguments in the previous Response, which has not been repeated for brevity. To provide further support for Applicants arguments, Applicants wishes to submit a couple of Declarations under 37 CFR 1.132. The first Declaration has been executed by Donald Wadsworth, a highly-educated firearms and ballistics expert. The second Declaration has been executed by Hershel Davis, a retired decorated Navy SEAL, who is now a highly sought after civilian contractor.

These Declarations also support secondary considerations of non-obviousness including long felt yet unmet need, ample resources for development, unpredicted results, and imminent commercial success. An obviousness determination is not the result of a rigid formula disassociated from the consideration of the facts of a case. Indeed, the common sense of those skilled in the art demonstrates why some combinations would have been obvious where others would not. See *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. (2007). "In determining whether the subject matter of a patent claim is obvious, neither the particular motivation nor the avowed purpose of the patentee controls. What matters is the objective reach of the claim." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. (2007) "The proper question to have asked was whether a pedal designer of ordinary skill, facing the wide range of needs created by developments in the field of endeavor, would have seen a benefit to upgrading [a prior art patent] with a sensor." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. (2007). In view of the newly submitted Declarations, Applicants believe that Claims 4-13 are allowable under Section 103.

In sum, Applicants believe that all pending claims 4-13 are now allowable over the cited art and are also in allowable form and respectfully request a Notice of Allowance for this application from the Examiner. Applicants hereby petition the Examiner for a two-month extension of time with which to respond to the Final Office Action and has authorized the Commissioner via EFS to charge our credit card for the extension of time fee and terminal disclaimer fees. The commissioner is authorized to charge any additional fees that may be due to our Deposit Account No. 50-2766 (Order No. FAS-003-US). Should the Examiner believe that a telephone conference would expedite the prosecution of this application, the undersigned can be reached at telephone no. 925-570-8198.

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